

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:

**SKYPORT GLOBAL
COMMUNICATIONS, INC.,**

DEBTOR

§
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§
§
§

CASE NO. 08-36737-H4-11

Chapter 11

**EMERGENCY MOTION TO APPROVE MODIFICATIONS
TO DEBTOR'S CHAPTER 11 PLAN OF REORGANIZATION
AND REQUEST TO SET EXPEDITED HEARING**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 20 DAYS** OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

**** EMERGENCY CONSIDERATION HAS BEEN SOUGHT FOR AUGUST 7, 2009 AT 8:30 A.M.**

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The Debtor, SKYPORT GLOBAL COMMUNICATIONS, INC. ("Skyport" or Debtor"), hereby moves this Court on an emergency basis, pursuant to 11 U.S.C. §1127 and Bankruptcy Rule 3019, for an order approving the attached modifications to its Chapter 11 Plan of Reorganization (the "Modification"). The grounds for this motion are as follows.

Expedited Basis and Certification

1. The reason for the filing of this motion is that Skyport just reached agreement with its principal secured creditors to support its Chapter 11 Plan, as modified. The attached

Modifications reflect these additional changes and certain other minor changes requested by other creditors. The Debtor requests emergency consideration of this motion because a confirmation hearing on the Debtor's Chapter 11 Plan of Reorganization is scheduled for August 7, 2009 at 8:30 a.m. The Modification must be approved before the Chapter 11 Plan can be confirmed. The verification required under BLR 9013 is found at the end of this document. Debtor requests that the hearing on this motion be set at the same date and time as the hearing on confirmation.

Jurisdiction and Venue

2. This Court has jurisdiction over this case pursuant to 28 U.S.C. § § 157 and 1334.
3. This is a core proceeding under 28 U.S.C. § 157(b)(2) and Venue of the Debtor's Chapter 11 case is proper in this district pursuant to 28 U.S.C. §§ 1408(1) and (2).

Factual Background

4. Skyport has two principal secured creditors. They are the Aegis Texas Venture Fund ("Aegis"), which is owed \$2.5 million and CenturyTel, which is owed \$2.7 million. There is a dispute between Aegis and CenturyTel over the validity and priority of their respective liens.

5. The Debtor proposed its Chapter 11 Plan of Reorganization (Docket #223) on May 22, 2009 (the "Plan"). The Plan provides for Skyport to make payments to satisfy the secured creditors into a disputed claim reserve account pending resolution of their lien disputes. The Plan contained two alternatives for making this payment. The first alternative was an immediate cash payment of \$800,000 to be funded by an exit loan. The second alternative was payment of \$1.7 million in cash over a three year period. The undersecured portions of these claims were to be treated as general unsecured claims.

6. The First Amended Disclosure Statement was approved on July 9, 2009.

7. The Disclosure Statement, Plan, and Ballots (the “Package”) were mailed to all creditors on July 10, 2009 who have until August 4, 2009, to vote to accept or reject the Plan.

8. Thereafter, both Aegis and CenturyTel indicated that they would vote against the Plan unless the treatment of their claims was changed. A conference involving Skyport, Aegis and CenturyTel with all principals present was held on July 23, 2009. During that conference comprehensive agreements were reached which resolved the lien validity and priority disputes as well as plan treatment. The agreements are embodied in the attached Modifications along with some other changes agreed to by the State of Texas, Intelsat and Alpheus Communications all solely with respect to the treatment of their claims. The treatment of other classes was not changed.

9. Based on the attached Modifications, the Debtor anticipates that Aegis and CenturyTel will vote to accept the Plan.

Summary of Modifications

10. The Modification grants CenturyTel an allowed secured claim in the amount of \$1.5 million and Aegis an allowed secured claim in the amount of \$800,000. Each creditor is granted a first lien on separate collateral and agrees to forgo any second lien on the collateral granted to the other. The claims are paid over varying time periods as set forth in the Modification with interest at the rate of 6% per annum. The undersecured portions of their respective claims are treated as general unsecured claims.

11. The Modification also clarifies the treatment for the State of Texas Sales tax claim and incorporates settlements reached with Alpheus Communications and Intelsat regarding their executory contracts.

Legal Background

12. The Bankruptcy Code specifically envisions that a plan proponent may modify the plan prior to confirmation. Specifically, 11 U.S.C. §1127(a) states:

(a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of this title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.

13. Case law further holds that the plan proponent's right to amend is liberally construed. See *In re FCX, Inc.* 853 F2d 1149, (4th Cir, 1988), *cert. denied* 489 US 1011 (1989) (modification permitted, even assuming "requirements for formal plan modification were not rigidly complied with").

14. Bankruptcy Rule 3019(a) also governs pre-confirmation plan modifications and provides as follows:

(a) Modification of plan before confirmation. In a chapter 9 or chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan

15. The underlined portion of Rule 3019(a) indicates that the Court may approve a plan modification so long as it does not adversely change the treatment of any creditor or equity security holder who has not accepted such change. Here, the Modification only impacts the creditors described therein and all of them have agreed to the change in treatment. The claims of creditors who are not addressed in the Modification are completely unchanged. Therefore, the Debtor submits that the Modification should be approved and that the creditors who have already voted on the plan should be deemed to have accepted the Modification.

16. The issue concerning when a modification requires additional disclosure and a new vote was discussed at length in the landmark case of [*In re American Solar King Corp.*, 90 B.R. 808, 823 \(Bankr. W.D. Tex. 1988\)](#). There, the Court dealt with a situation where stock was going to be distributed, but the modification provided for some minor dilution of the actual equity interests to be received. In determining whether this modification should be permitted without requiring additional disclosure and solicitation, Judge King stated,

Section 1127(c) requires that all modifications satisfy the adequacy-of-disclosure concerns of Section 1125. 11 U.S.C. § 1127(c). This does not necessarily mandate the preparation of a new disclosure statement and resolicitation of the plan, however. See H.R.Rep. No. 595, 95th Cong, 1st Sess 411 (1977) ("if the modification were sufficiently minor, the court might determine that additional disclosure was not required"); 5 Collier on Bankruptcy, para 1127.03, p. 1127-6 (15th ed. 1987) ("a new disclosure statement is not required in every case where a modification is requested"). Further disclosure occurs only when and to the extent that the debtor intends to solicit votes from previously dissenting creditors or when the modification materially and adversely impacts parties who previously voted for the plan. The modification here proposed does not of itself contemplate further solicitation of classes or claimants, so our focus shifts to the materiality of the modification.

Id at [823](#). In determining whether a modification is material, Judge King adopted the following definition:

A modification is *material* if it so affects a creditor or interest holder who accepted the plan that such entity, if it knew of the modification, would be likely to reconsider its acceptance.⁸ Collier on Bankruptcy, para. 3019.03, p. 3019-3 (15th ed. 1987). The severity of the modification need not be such as would motivate a claimant to *change* their vote--only that they would be apt to *reconsider* acceptance. A modification which is not likely to trigger such reconsideration *de facto* satisfies [Section 1125](#) disclosure requirements.

Id at 824.

17. Judge King determined that the stock dilution in that case would be at most 1%. Based on the foregoing concepts and definitions, Judge King found that:

A dilution of less than one percent (1%) is thus the outcome of the modification, a dilution which this court finds to be so small that no previously assenting creditor

would be motivated to reconsider their vote because of it. Because the modification would not trigger reconsideration, the requisites of Section 1127(c) are satisfied by the existing disclosure statement.

Id.

18. The Debtor submits that in this case the Modification is even less material than Solar King since the creditors not treated in the Modification are receiving the exact same treatment as reflected in the disclosure statement. As a result, no creditor who has already voted in favor of the Plan would bother to reconsider its vote.

19. The Debtor therefore asks that the Court deem the Modifications non-material and otherwise approve them. In addition, the Court should find under Bankruptcy Rule 3019, that all creditors who have already accepted the Plan shall be deemed to accept this Modification.

WHEREFORE, the Debtor prays that:

1. The Court set a hearing on this motion for August 7, 2009, at 8:30 a.m.
2. The Court finds that the Modification does not adversely affect the treatment of any creditor who has not already accepted the change.
3. The Court determines that the Modification shall be deemed to be accepted by all creditors and equity security holders who have previously accepted the plan.
4. The Court grants such other and further relief as is just and proper.

Dated: July 30, 2009

Respectfully submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Edward L. Rothberg

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ATTORNEYS FOR DEBTOR

Verification

The factual statements in paragraph 1 are true and correct within my own personal knowledge. In my opinion, a genuine emergency exists that requires consideration of this matter at the confirmation hearing to avoid hardship to the Debtor. I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 29, 2009

/s/ Edward L. Rothberg

Edward L. Rothberg

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing motion were forwarded U.S. first class mail, postage prepaid, and/or by electronic mail through the ECF notification system, on July 30, 2009, to parties listed on the attached Service List.

/s/Edward L. Rothberg

Edward L. Rothberg

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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IN RE:	§	
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SKYPORT GLOBAL	§	CASE NO. 08-36737-H4-11
COMMUNICATIONS, INC.,	§	
	§	
DEBTOR	§	Chapter 11

**MODIFICATIONS TO CHAPTER 11 PLAN OF REORGANIZATION FILED BY
DEBTOR, SKYPORT GLOBAL COMMUNICATIONS, INC. (DOC. 223)**

Pursuant to Section 1127 of the Bankruptcy Code, the Debtor, Skyport Global Communications, Inc., hereby submits the following Modifications to the Chapter 11 Plan of Reorganization filed on May 22, 2009 (Doc. 223).

Modifications to Article 3

Section 3.4 shall be modified by inserting the phrase "in full" on the second line after the word "paid" and by adding the following to the end of the section:

The only Allowed Priority Tax Claim is held by the Texas Comptroller of Public Accounts in the amount of \$116,446. The quarterly payment is changed to \$10,387. The balance of the Claim held by Texas Comptroller of Public Accounts in the amount of \$9,989 shall constitute a General Unsecured Claim and paid in accordance with Section 4.4 of the Plan. Further, the Texas Comptroller of Public Accounts is exempted from Sec. 13.6. Finally, a failure by the Reorganized Debtor to make payment to priority tax creditors pursuant to the terms of the Plan shall be an Event of Default. If the reorganized debtors fail to cure an Event of Default as to tax payments within ten (10) days after service of a written notice of default from a priority tax creditor, then a priority tax creditor may (a) enforce the entire amount of its claim; (b) exercise any and all rights and remedies under applicable nonbankruptcy law, and (c) seek such relief as may be appropriate in this court.

Modifications to Article 4

Section 4.2.1 through 4.2.5 shall be deleted in their entirety and replaced with the following:

- 4.2.1 Classification of CenturyTel Claim. Class 2A consists of the Secured Claim of CenturyTel, which holds a total claim of \$2.7 million. CenturyTel shall be granted an Allowed Secured Claim in the amount of \$1.5 million.
- 4.2.2 Treatment. The CenturyTel Allowed Secured Claim shall bear interest at the rate of 6% per annum and shall be paid with equal monthly payments based on a fifteen year amortization commencing December 31, 2009. The entire principal balance shall be due and payable on December 31, 2014. The Reorganized Debtor may prepay this Claim without prepayment penalty. CenturyTel shall retain its liens and security interests; however, the CenturyTel Allowed Secured Claim shall be secured by a lien solely on the Reorganized Debtor's interests in real estate, the City of Houston ground lease, any buildings and improvements thereon and fixtures therein, as well as the generator and related electrical equipment described in the attached Exhibit A. Said liens shall be first and priming liens on said property in preference and priority to any and all other claims and interests. The Reorganized Debtor agrees to provide CenturyTel with confirmation of the payment of rent on the ground lease with the City of Houston. The failure to timely pay a rental payment in accordance with the ground lease shall be a default of the obligations created hereunder. The balance of the CenturyTel Claim in the amount of \$1.2 million shall constitute a General Unsecured Claim and paid in accordance with Section 4.4 of the Plan.
- 4.2.3 Classification of Aegis Claim. Class 2B consists of the Secured Claim of Aegis which holds a total claim in the amount of \$2.5 million. Aegis shall be granted an Allowed Secured Claim in the amount of \$800,000.
- 4.2.4 Treatment. The Aegis Allowed Secured Claim shall bear interest at the rate of 6% per annum and shall be paid with equal monthly payments based on a four year amortization commencing December 31, 2009. The entire principal balance shall be due and payable on December 31, 2012. The Reorganized Debtor may prepay this Claim without prepayment penalty. Aegis shall retain its pre and postpetition liens; however, the Aegis Allowed Secured Claim shall be solely secured by a lien on all existing and future general intangibles, intellectual property, equipment, inventory, investment property, contracts, personal property FCC licenses and proceeds from each, except accounts receivable and customer contracts, and the generator and related electrical equipment described in the attached Exhibit A. Said liens shall be first and priming liens on said property in preference and priority to any and all other claims and interests. For a period of 12 months from December 31, 2009, Aegis shall have the right to convert \$100,000 of its Allowed Secured Claim to a 5% equity interest in the Reorganized Debtor. The balance of the Aegis Claim

in the amount of \$1.7 million shall constitute a General Unsecured Claim and paid in accordance with Section 4.4 of the Plan.

Modifications to Article 9

Article 9 shall be modified by adding the following new sections 9.5 and 9.6.

- 9.5 The Debtor entered into a settlement with Alpheus Communications, L.P. and Alpheus Data Services, LLC agreeing, among other things, to assume two pre-petition executory contracts as modified, agreeing to a reduced cure amount, and waiving preference claims (Doc. 237). This settlement was approved by the Court pursuant to its Order Approving Compromise and Settlement dated July 7, 2009 (Doc. 259). This settlement is hereby incorporated and made part of the Plan. To the extent that anything contained in this Plan conflicts with the settlement agreement, the terms of the settlement agreement shall control. Likewise, notwithstanding anything to the contrary contained in this Plan, Alpheus' cure claim shall be paid in accordance with the settlement agreement, and Alpheus shall not be required to file any application for payment of any administrative claims relating to the assumption of Alpheus' contracts and its cure claim related thereto.
- 9.6 On February 26, 2009, the Court entered its Order Authorization Rejection of Non-Exclusive Service Agreement with Intelsat (Doc. 120). Notwithstanding that order, disputes remained between Intelsat and the Debtor over potential pre-petition preferential payments and the Debtor's refusal to pay for post-petition services. The Debtor and Intelsat have resolved this dispute by agreeing to: (i) grant Intelsat a \$25,000 Administrative Claim payable in accordance with Section 3.2 of the Plan; (ii) grant Intelsat a \$1 million General Unsecured Claim payable in accordance with Section 4.4 of the Plan; and (iii) waive all claims existing between the Debtor and Intelsat (or any of their affiliates, including Intelsat LLC, Intelsat, Ltd. and Balaton Group) and their respective agents, attorneys, officers and directors. This settlement was approved by the Court pursuant to its Agreed Order to Estimate Intelsat Claim dated July 24, 2009 (Doc. 285). This settlement is hereby incorporated and made part of the Plan.

Modification to Article 12

Section 12.1 shall be modified by deleting the word "exclusive" on the second line.

Modifications to Article 13

Section 13.7 shall be modified by adding a new section 13.7.4 as follows

13.7.4 Subject to confirmation of the Plan, Aegis, CenturyTel, Balaton and Robert Kubbernus on behalf of themselves, their agents, officer, directors, employees, legal representatives, attorneys, predecessors, successors, and assigns and all persons, natural or corporate, in privity with them, expressly RELEASE, ACQUIT and FOREVER DISCHARGE each other from any and all Claims, demands, responsibilities, obligations, liabilities and causes of action of whatsoever nature, statutory or otherwise, in contract or in tort, whether known or unknown, fixed or contingent; it being the intent of the parties hereto to fully and completely release all claims and settle all disputes and controversies, whether heretofore asserted or not. This mutual release has been consensually agreed to by the named parties.

DATED: July 30, 2009

SKYPORT GLOBAL COMMUNICATIONS, INC

By: /s/Robert Kubbernus
Robert Kubbernus, CEO

OF COUNSEL:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

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ATTORNEYS FOR SKYPORT GLOBAL COMMUNICATIONS, INC.

Exhibit A

POWER ROOM EQUIPMENT, INCLUDING BUT NOT LIMITED TO ASSORTED BATTERIES, (2) UPS MAINTENANCE BYPASS PANELBOARD CONTROL PANELS W/ SQUARE D CIRCUIT BREAKERS, ASSORTED OTHER SQUARE D CONTROL PANELS, (2) LIEBERT 150KVA UNINTERRUPTIBLE POWER MODULES, (2) LIEBERT 360A UNINTERRUPTIBLE POWER SYSTEMS, (2) LIEBERT COOLING UNITS, (2) DISTRIBUTION 1600XL UNITS, ASSORTED RECTIFIERS, ETC.

GENERATOR, CATERPILLAR, S/N CAT00000K9EP02559, INCLUDES CATERPILLAR GEN SET 3412, MFG. 2003, 750 KVA, 600KW, GENERATOR MOUNTED ONTO 2,000 GALLON WELDED CARBON STEEL DIESEL FUEL TANK, ALSO INCLUDES SIMPLEX LOAD BANK MOUNTED ONTO END OF GENERATOR SYSTEM AND CONTROLS LOCATED INSIDE BUILDING [B]

AIR CONDITIONING UNITS, LIEBERT, (3) TOTAL EACH W/ LED READOUT, ALSO INCLUDES LIEBERT PRECISION POWER NETWORK POWER SUPPLY, EMERSON NETWORK POWER HELIOS DISTRIBUTION BAY INCLUDING METER ASSEMBLY AND OTHER DISTRIBUTION PANELS, ETC.,

FIRE ALARM SYSTEM, JOHNSON CONTROLS INCLUDES IFC 200 CONTROL, ETC.,

MASTER SERVICE LIST
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Case # 08-36737-H4-11

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(Excluding Master Service List)
SkyPort Global Communications;
Debtor
Case # 08-36737-H4-11

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